# Legislative Council

Thursday, 17 September 1981

The PRESIDENT (the Hon. Clive Griffiths) took the Chair at 2.30 p.m., and read prayers.

## QUESTIONS

Questions were taken at this stage.

## ACTS AMENDMENT (LAND USE PLANNING) BILL

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by the Hon. I. G. Medcalf (Leader of the House), read a first time.

*Second Reading*

**THE HON. I. G. MEDCALF** (Metropolitan—Leader of the House) [2.44 p.m.]: I move—

That the Bill be now read a second time.

The purpose of this Bill is to supplement the existing metropolitan region scheme legislation governing the control of development of land within the metropolitan region. It provides for a form of interim control of development within areas to be known as "planning control areas". Under the Metropolitan Region Town Planning Scheme Act, the Metropolitan Region Planning Authority is responsible for carrying out the metropolitan region scheme, including the task of controlling development so as to be consistent with the scheme.

The authority has the responsibility of determining all applications for approval to commence development, but is empowered also to delegate any of its functions to certain specified persons or bodies, including the local authorities within the region. The authority used this power in 1963, shortly after the region scheme came into force, to delegate certain of its development control powers to the local authorities. It delegated the control of development in respect of all that land which is zoned under the region scheme. Within the scheme, all land in the region is either zoned or reserved. The kinds of zones are urban, industrial, and rural; and the reservations are for, public purposes such as parks and recreation, State forests, water catchments, railways, highways, hospitals, and high schools.

The metropolitan region scheme legislation recognises that the scheme will need to be kept under review, and the authority has the power under section 32 to gazette areas wherein the proposals contained in the scheme which relate to those areas are intended to be reviewed. Thereafter, all applications for development in those areas are required to be referred to the authority for determination, even though they are within areas which are zoned.

It is proposed in this Bill that all applicants within a planning control area will be required also to be referred to the authority for determination.

The statutory process for determining applications for approval to commence development is provided under the metropolitan region scheme and set out in the text of the scheme. It is required that any person wishing to commence development shall, first of all, obtain planning approval by making application in the prescribed form to the local authority in whose district the land which is the subject of the application is situated. If the land is within a reservation under the scheme, the local authority is required to forward the application, together with its recommendations to the MRPA for determination.

Should the land be within an area which is the subject of a resolution of the authority under section 32, the local authority is again required to forward the application to the authority with its recommendations for a decision. Whereas it may appear that the authority has retained most of the decision-making powers, the majority of developments are situated within zoned areas and are not affected by any resolution of the authority under section 32. Therefore, they are determined by the local authorities.

When the MRPA or a local authority makes its determination, it is obliged to have regard to such matters as the purpose for which the land is zoned or reserved, and the orderly and proper planning of the locality. The application may be approved or refused, and if it is approved, it may be subject to such conditions as the authority or local authority may think fit.

The decision of the authority or local authority must be made within 60 days of receiving the application, failing which the application is deemed to be refused. Any applicant whose application is refused or approved subject to conditions which are unacceptable may appeal to the Minister or to the Town Planning Appeal Tribunal under part V of the Town Planning and Development Act. However, there is no appeal against a decision when the refusal or conditional approval is consistent with the provisions of an operative town planning scheme.

There is no appeal also against a decision of the authority if the proposed development is situated on land reserved under the metropolitan region scheme.

As previously mentioned, the Bill relates to areas which are proposed to be designated as "planning control areas". The new legislation is intended to assist in relieving a problem which is not addressed by the existing provisions of the region scheme legislation.

Often the MRPA sees a need to make provision under the scheme for land to be set aside for some public purpose. For example, it might be decided that there is a need for protection of a particular river and wetland system by reserving it for the purpose of parks and recreation, after an environmental investigation and study have determined the extent of the necessary reservation. If the task takes several years, the authority may find itself faced with the problem of trying to preserve the status quo if landowners within the area of investigation wish to develop before the reservation has been created. Under this proposed legislation, the area of investigation will, with the approval of the Minister, be gazetted as a planning control area, which confers certain protection upon the owner, and assists the authority also. As already explained, the purpose of the legislation is to provide a way of suspending development within a general area which is not defined by a reservation shown in the metropolitan region scheme.

The new provisions suitably provide for the status quo of an area to be reserved without bringing down a reservation. Unless land is reserved under the present legislation, there are no powers under which the authority can acquire it or pay compensation to landowners for refusal of permission to develop their properties.

Under the proposed legislation, if the authority considers that any land situated in the metropolitan region may be required for any of a number of specified public uses, it may, with the approval of the Minister, declare the land to be a planning control area. Whereas any landowner who wishes to commence and carry out development within the metropolitan region is required to make application to the local authority concerned, if his land is within a planning control area the local authority must forward the application to the authority for determination. The local authority will be required to forward the application within 30 days of receiving it, together with its recommendations, if any.

The authority may consult with any other authority it thinks appropriate and, having regard to the nature of the development proposed and any special considerations relating to the nature of the planning control area, may approve, subject to such conditions as it thinks fit, or refuse the application.

An applicant whose application has been refused or approved subject to conditions which are unacceptable to him, will be able to appeal under part V of the Town Planning and Development Act. Provision for such appeals is proposed by an amendment to section 37 of that Act, and the appellant will have an option of appealing to the Minister or to the Town Planning Appeal Tribunal.

Under provisions contained in the Bill, compensation for injurious affection is to be payable in respect of land within a planning control area, in the same circumstances and to the same extent as if the land in the planning control area instead of being in a planning control area had been reserved under the metropolitan region scheme for a public purpose.

In effect, compensation will be payable if the authority refuses an application for permission to carry out development, or grants permission subject to conditions that are unacceptable to the applicant.

Under the existing provisions of the metropolitan region scheme Act, the authority has the option of acquiring the affected land instead of paying compensation, and under the new legislation the authority will have a similar option in respect of land within a planning control area.

There will be also a proviso that the inclusion of an owner's land within a planning control area will not prevent the continuation of any lawfully established use of the construction and completion of any development which had been lawfully approved and/or commenced when the control area was gazetted.

Finally, the Bill provides that it will be an offence to carry out development within a planning control area without approval of the authority. The penalty for contravention of this section will be $2 000 and, in the case of a continuing offence, a further fine of $200 per day.

The same penalties are provided for already under the Act for contravention of the region scheme and have been included in the new provisions for purposes of clarity in their interpretation.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. F. E. McKenzie.

## EXPLOSIVES AND DANGEROUS GOODS AMENDMENT BILL

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by the Hon. I. G. Medcalf (Leader of the House), read a first time.

*Second Reading*

**THE HON. I. G. MEDCALF** (Metropolitan—Leader of the House) [2.53 p.m.]: I move—

That the Bill be now read a second time.

Currently, under the provisions of section 62 of the Explosives and Dangerous Goods Act, fees are prescribed for certain services and functions carried out by the controlling department.

However, the department has been advised that doubt exists as to the power for fees to be charged under the Act for the following—

examination for a shotfirer's permit;

examination of vehicles for the licensed conveyance of explosives in bulk or packages;

approval of prototype explosives firing equipment;

testing of electrical shotfiring equipment;

examination of vehicles for the licensed conveyance of dangerous goods in bulk or in packages; and

approval of containers and equipment for the storage, conveyance and dispensing of dangerous goods.

All these functions are necessary to the administration of the Act, and the effective control over explosives and dangerous goods, in the interest of public safety.

They are increasingly costly and time consuming, and the proposed amendments will ensure that those persons directly concerned legally accept a proportion of the costs involved.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. F. E. McKenzie.

## FAMILY COURT AMENDMENT BILL

*Second Reading*

**THE HON. I. G. MEDCALF** (Metropolitan—Attorney General) [2.55 p.m.]: I move—

That the Bill be now read a second time.

In 1979 an amendment was made to the Family Court Act to enable the Registrar of the Family Court to be appointed a stipendiary magistrate under the Stipendiary Magistrates Act if he was qualified under that Act to be so appointed.

As was mentioned at the time, such an appointment would allow the registrar to undertake some of the minor administrative and judicial tasks associated with the jurisdiction of the Family Court, such as return dates for ancillary applications, consent and interim orders, granting adjournments, and enforcement or variation of maintenance. The object was to relieve the judges of this work so that they could spend more time in dealing with defended matters.

The system of having the registrar sitting as a magistrate has proved to be quite successful, but unfortunately it has been possible for the registrar to conduct on average only about half of the lists for fixing the first return dates, and one of the two lists for enforcement of maintenance each week. This means that two of the former and one of the latter lists still need to be dealt with by a judge.

The registrar cannot be expected to devote all his time, or even the majority of it, to magisterial work.

As registrar, he is the administrative head of the court and he naturally retains the ultimate responsibility attached to this duty. Just over 10 000 applications were filed in the court in 1980.

It is therefore proposed that the Family Court Act should be amended to extend the existing provisions in regard to magisterial appointment to the deputy registrars.

Initially, it is proposed that one deputy registrar would be appointed, but provision has been made for other deputy registrars to be appointed—provided, of course, that they qualify as magistrates—should the need arise.

The volume of routine work which is coming before the Family Court of Western Australia is such that a deputy registrar/magistrate could spend up to three days a week on it, which consequently means a further saving of judicial time.

The proposal therefore would enable the work of the court to be handled with greater economy and efficiency. I therefore commend the Bill to the House.

Debate adjourned, on motion by the Hon. H. W. Olney.

## MISUSE OF DRUGS BILL

*Second Reading*

Debate resumed from 16 September.

**THE HON. H. W. OLNEY** (South Metropolitan) [2.57 p.m.]: The Bill now before us is a misnomer, because it really has nothing to do with the misuse of drugs. As the Minister said when he introduced this legislation, it is a Bill which codifies or brings together in one Statute all the laws relating to offences connected with the production, sale, possession, and use of certain drugs which are declared by the legislation to be prohibited.

At the outset it is important the House appreciates this Bill in no way at all solves the problem of drug addiction; indeed, it does not touch on that problem at all. To that extent, and for that reason, I say with some confidence the Bill is a misnomer.

In his second reading speech on the Bill, the Minister made much of the Government's desire to prohibit trafficking in drugs, and we support that. We support the object of preventing the type of operation he described to some extent in his speech, which involves people, who are usually anonymous, making large sums of money illicitly and preying upon the innocent people in the community by trafficking in substances which, in some circumstances, can cause considerable injury to health whilst at the same time creating various social problems.

Instead of a Misuse of Drugs Bill, the Government would have done well to follow Mr Justice Williams' advice in his report on the Royal Commission of Inquiry into Drugs and adopt a Bill directed to the drug trafficking area. Mr Justice Williams' proposal was that there should be a drug trafficking Act. The sort of sanctions which the Government wishes to introduce with very heavy penalties would be properly contained in such legislation. But to say that this Act has anything to do with the misuse of drugs is, of course, wrong. Indeed, the first word in the title, "Misuse", implies there are circumstances when the use of drugs is not objectionable. Equally, there are circumstances where the use of drugs will be objectionable. The law purports to regulate the latter circumstance—the objectionable use or the misuse of drugs.

This legislation, as we have been told through a spate of Press releases from the Minister for Police and Traffic that have come forth since the Bill was introduced, has been in preparation for many years, as was that other monumental piece of legislation, the Mental Health Bill. It apparently required amendment in some significant respects before it reached this place. One wonders exactly how this Government goes about preparing important legislation like this. If one newspaper report is to be believed, a senior police officer prepared it. In fact, when one looks at the Bill one wonders precisely why we have it at this point in time. Most of the provisions in the Bill create offences which are already in the law. There seems to be no real change in substance, with the exception of two or three respects which will be mentioned.

Apart from the offences themselves, new provisions are introduced which will facilitate police operations in the detection and prevention of offences under this proposed Act. Subject to those provisions being scrutinised carefully at the Committee stage, it can be said that the giving to the police of appropriate powers to perform their duties cannot be objected to. However, this is not to say that we support the granting of unlimited power to the police to do whatever they like as they think fit. Indeed, some of the changes that the Bill has undergone since its first introduction into Parliament indicate a recognition by the Government that the Opposition had a valid point with respect to those new powers. Those matters will be raised at the Committee stage.

It has been said—and I say it myself—that this Bill is to some extent window dressing. The Government has probably detected in some sections of the community—not necessarily the majority of the community—a desire that the Government should be seen to be tough with organised crime. The Minister makes no excuses for introducing what he describes as a tough new law. The suggestion that this law is tough is in most cases justified, but the suggestion that it is new is not really justified. This will be seen when we come to consider the details of the Bill. In fact, there is quite an inconsistency here in that there are trafficking in drugs offences against which it is said this new law is aimed which still carry substantially the same penalty—a 25-year maximum term of imprisonment—under the existing law. The maximum fine has been raised.

Having regard to the penalty with respect to the new conspiracy provision—a maximum of 20 years' imprisonment without the option of a fine—it does appear that the Government's attitude to the penalising of serious offences under this Bill is directed more towards imprisonment rather than fines. So with respect to the serious offences, there has been no significant change. There will be a change in respect of the penalties applicable to those at the consumer end of the drug chain. Of course, these are the ones the

Government has said it is not attempting to get at in the same way as the drug traffickers.

The Government has made a couple of fundamental errors with this Bill. I propose to direct a few comments to them, but do not propose to speak at any great length. As I have said, this Bill is one that requires very close scrutiny in Committee. One thing the Government does not appear to have appreciated is the distinction between drug addicts and drug users. All the way through the speech we have references to drug addicts. I refer to page 27 of the Minister's notes. He said as follows—

> The Government realises that harsh laws directed to addicts alone will not reduce the problem. The legislation is therefore not aimed to challenge the problem in that manner, but is aimed at cutting off the market supply.

He further goes on and says—

> It aims at those so far protected profiteers behind the scenes.

We would not quibble at the latter objective of getting to the profiteers behind the scenes. It is completely wrong to equate drug users with drug addicts in the same way as it is completely wrong to call alcoholics all those people who consume alcohol. This highlights the policy in this second reading speech of resorting to emotional terms, presumably in the hope of scoring some sort of political gain in this very sensitive area.

The Bill has had an extensive exposure publicly and politically in the time it has been before Parliament, and fairly rigid demarcation lines of opinion have been expressed. The Government has determined this shall be law, and I have no doubt, with the numbers it possesses in Parliament, it will become law. However, that is not to say the Opposition wishes to shirk its responsibility to ensure the legislation is properly vetted by Parliament and that all the objections we see to the Bill are raised.

If we can get one thing straight from the start, it is not Labor Party policy to legalise the use of cannabis. If that assertion has been made once, it has been made 100 times. Apparently some political mileage has been obtained by Ministers making those sorts of suggestions. If one reads the *Hansard* record of debate on this matter in another place, one sees that accusation occurring throughout the speeches of Government members.

Another thing we should get straight is that the Opposition is not opposed to the police having adequate powers to carry out their proper functions in the protection and prevention of crime, whether it be murder, theft, drug abuse, or exceeding the speed limit.

However, the Opposition does object to one particular aspect of criminal law receiving an excessive amount of police power, out of all proportion to the ordinary powers the police enjoy in respect of other aspects of their work.

Towards the end of his second reading speech, the Minister made the following statement—

> It is essential that our police have the determination, the skill, and the legal permit them to prevent the occurrence in our society of the evils which have beset and so badly affected the quality of life in some urban communities of other western nations.

One does not wish to argue with that, although I suppose one could. If indeed the evils which have beset and badly affected the quality of life in other western nations show no evidence of surfacing here, there seems to be no reason for the law unduly to anticipate what might happen, lest such anticipation might encourage the happening of what is sought to be prevented.

Having discussed the evils which have beset and so badly affected the quality of life in some urban communities, the Minister went on to say—

> Those evils include terrorism, urban warfare, politically motivated crime, and the abuse of drugs.

If ever there was a sentence designed to draw upon the emotions of the community, or on those people who heard or read the Minister's speech, that certainly must be it. The Minister has linked terrorism, urban warfare and politically motivated crime—all of which are not features of the Australian scene—with the abuse of drugs.

I feel sorry for the Minister in this House having to read speeches prepared for him elsewhere. Whilst those sort of statements might come happily from Mr Hassell's lips, they are not very convincing coming from the Minister for Fisheries and Wildlife.

The Hon. G. E. Masters: I thought it was a very good speech.

The Hon. H. W. OLNEY: I wish to draw the attention of the House to some of the things which are not in the Bill which one would expect might be in a Bill of this nature. I turn first to a piece of legislation from the United Kingdom—an Act named, strangely enough, the Misuse of Drugs Act 1971—which came into force in the United Kingdom, I think, about the middle of 1973. Australia is not alone in having problems of law enforcement or problems with regard to the

misuse of drugs. It is interesting to note how a country like the United Kingdom approached the problem of drug abuse 10 years ago.

If we turn to the first section, we find what we often find in English Statutes; namely, what the Act is about—unlike our Statutes, where we have to wade through 49 or 50 sections before we get through all the nonsense and discover what the Act is about.

The first section establishes the Advisory Council on the Misuse of Drugs. It imposes upon that advisory council the duty to keep under review the situation in the United Kingdom with respect to drugs which are being or appear to be likely to be misused, the misuse of which is having or appears to be capable of having harmful effects sufficient to constitute a social problem, and to give to any one or more of the Ministers advice concerning steps that ought to be taken for preventing the misuse of those drugs and dealing with the social problems occasioned therewith.

I suggest to members that is a laudible opening to the United Kingdom Misuse of Drugs Act.

The English Act goes on to create a series of offences which are almost identical to those which appear in this Bill and which, of course, already appear in existing law in this State. If members read the English legislation they will see that the penalties regarded there as being harsh are considerably less than the penalties provided in this Bill. Indeed, the maximum penalty in the United Kingdom for an offence which, under our existing law, attracts a maximum sentence of 25 years' imprisonment, is a sentence of 14 years' imprisonment.

The English legislation goes on to deal with other aspects after having established the offences. It sets up powers for the Secretary of State to prevent the misuse of drugs and includes other provisions, all of which aim at overcoming the social problems connected with the misuse of drugs.

It is no good starting off on the premise that the use of drugs is undesirable—and I use the term "use" advisedly—and to draw from that that the misuse of drugs must be prohibited, because this overlooks the real mischief, which is the effect of the misuse of drugs.

While it is laudable to say that if we cut off the supply of drugs we will prevent their use, I suggest we would be as successful as the United States was in prohibiting the manufacture of alcoholic beverages during prohibition, when it purported to cut off supplies of alcohol.

The Hon. R. J. L. Williams: Sheer rubbish.

The Hon. H. W. OLNEY: An honourable member believes that is sheer rubbish, and he is entitled to his view. But for many years in our law we have had a 25-year maximum sentence of imprisonment along with other very severe penalties for the offences this Bill covers, and yet it appears the problem is getting worse; otherwise why is the Government legislating in this way?

I agree, let us do our best to cut off the supply at its source. I might even vote for prohibition, and it would certainly not bother me as I never touch alcohol. I probably would not vote for it, in fact, because it would be a silly way of attacking the problem.

If we are to prevent the misuse of drugs how, apart from trying our hardest to prevent the supply of the drugs, are we going to tackle the problem if we do not reach the user of drugs and in some way see that he does not abuse them? Ever since I was at school and probably 100 years before that we have had temperance lectures about the misuse of alcohol to educate people about the effect of that very dangerous drug which is in common use in the community. It happens to be a drug that brings in quite a bit of Government revenue, so we cannot abolish its use.

Education of the user is a factor which should be paramount in the consideration of any attack upon the problem that the Government sees with the misuse of drugs. But there is nothing in this Bill or anywhere else that is aimed at that problem. That in itself indicates the very half-hearted effort the Government is making towards solving what it sees as a serious social problem.

We have not had made available in this House any information as to the incidence of drug abuse in the community. We have not had any statistics or specific cases showing the problems in the law that need to be remedied. Whilst in no way do I wish to minimise the seriousness of the problem of drug abuse so far as the addict is concerned, I do think it is fair to say that we are dealing with a fairly small section of the community.

A report was issued by the United Kingdom advisory council and printed by Her Majesty's Stationery Office as part of the Central Office of Information service relating to the prevention and treatment of drug misuse in Britain. It was issued in 1977 after the English Act of 1971 had been in force for about four years. I suggest all members take note of the introduction to that report, which in part reads as follows—

> DRUG misuse in the United Kingdom, as in many other countries, is seen as part of a much wider problem of society's over-reliance on alcohol, cigarettes, and sleeping

> pills and tranquillisers. Although a relatively small problem in terms of the numbers of people involved, and only one of a whole range faced by health and personal social services authorities, it remains a source of public concern, not least because of the great harm it can cause young people.

The report goes on to relate the increase in the 1960s of the number of young people who were seen to be becoming dependent on heroin and cocaine.

The policy which the UK Parliament has adopted in dealing with this problem is a policy based upon the belief that drug users are people with health and social problems who must be helped. It is pointed out in the report that the help is on a multi-disciplinary basis and involves social workers as well as nurses and members of the medical profession.

I suggest to the Government that it ought to be thinking not only of the police powers necessary to control, or hopefully eliminate, the exploitation and trafficking of drugs on a wholesale scale, but also it should be thinking of the victims. It should be thinking of helping them both by treatment and by education. It should be providing some hope that even if the source of the drug cannot be stopped its use will not be a social problem in this community.

On page 18 of the report is a passage which this House should take note of. I quote as follows—

> A Government White Paper on preventive medicine published in 1977 noted that, although a recent report on drug misuse among children of school age, prepared by the Advisory Council on the Misuse of Drugs, had suggested that 'attitudes may already be changing and leading to a decline in drug misuse among young people, the Government continues to regard the matter with grave concern'.
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> The need is recognised for close co-operation between teachers, local social services departments and others involved with the welfare of young people whenever problems of this kind arise. Particularly vulnerable are those moving into higher education after leaving school and those who, on leaving home for the first time, may find the process of adjustment traumatic and difficult. Their problems are often compounded by the easier availability of drugs, by contact with people of different social backgrounds, and the greater opportunities for drug experimentation. The primary health care services—including family doctors, community nurses and health visitors working with social work staff—play an important part in the education and counselling of young people to help them to overcome problems without resort to drugs. The Government believes that more sophisticated health education campaigns may be needed to help to inform such young people about the realities and risks. The attitudes of teachers and of contemporaries are seen as having particular importance. Methods of teaching about experimentation with drugs are being discussed, but the aim is to enable young people to reach sensible decisions about drugs use in situations where drugs may be offered.
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> Secondary prevention, including counselling and advisory services, especially for young people, helps drug misusers by ensuring early advice and treatment before they become heavily dependent.

Of course, the problem is with the misuse of drugs, and I concede that there is a problem for some people in the community who misuse drugs. The problem affects people, individuals, and if it were not for the problem of drug dependency or drug abuse there would seem to be no reason for creating the very serious offences which this legislation sets out to continue to enforce and to reinforce.

I return to the very simple example of alcohol. No-one would deny that dependence on alcohol is a problem to anybody dependent upon it. We do not seek to control that social problem by prohibiting the manufacture, distribution, and possession of alcohol. One could apply an analogy. If the sort of laws applying to drugs were to apply to alcohol any person who had an empty bottle with a whiff of liquor emanating from it, or a dirty glass with a smudge of beer around the edge, would be guilty of an offence. He could be found guilty of using a utensil for the consumption of alcohol. Such a law would not be tolerated by the community, and I am not suggesting it should be.

The problems with alcohol are no less than problems with drugs; they are no different from those with which we deal in this legislation. I do not propose to go on further at length on this subject, except to draw attention to a provision in an existing law on which the Hon. R. J. L. Williams may be able to enlighten us, and that is the Alcohol and Drug Authority Act. Section 18 of the Act lists functions of the authority. Section 18(g) provides—

(g) to inquire into the respective provisions of the laws of this State with respect to offences in which the use of alcohol or drugs, or both, is an element, and with respect to the penalties for those offences, to consider the desirability or otherwise, in the community interest, of repealing or modifying any of those provisions, and to make such recommendations thereon to the Minister and the Attorney General as the Authority thinks fit;

I ask: Has the Alcohol and Drug Authority ever carried out that function? Has it advised the Government in terms of that paragraph as to the desirability of changing laws in the community interest? If so, the House would be interested to know what advice has been received from the authority. I would think that if there has been such advice we would have been told about it in the second reading speech. I can draw the conclusion only that the authority has not addressed itself to the aspect of advising in respect of the laws of this State.

The Hon. R. J. L. Williams: Yes, it has, on several occasions.

The HON. H. W. OLNEY: I stand corrected by Mr Williams. I will be pleased to hear in due course in this debate what the authority has advised. That organisation is in a very good position—indeed, I suggest in a better position than the Police Force—to advise the Government on matters referred to in section 18(g) of that Act.

Before I get off this matter, I make the comment that it seems strange to me—I would be happy for an explanation to satisfy my curiosity—that a law which imposes very heavy penal sanctions, a law that apparently is of such significance as to justify special provisions being made with respect to the jurisdiction of the District Court, should fall within the administrative responsibility of the Minister for Police and Traffic.

This law is not different from many other penal laws set out in the Criminal Code and other penal Statutes, which quite properly fall within the jurisdiction of the Attorney General. I want to know the rationalisation or philosophy involved in assigning this law to the administration of the Minister for Police and Traffic.

The police are heavily involved because they will obtain special powers in order to enforce the law. This legislation includes Ministerial responsibility for such things as recommending to Parliament what penalties should be imposed; the responsibility for fiddling with details in schedules to which we will make reference; and the responsibility for setting up some special provisions to facilitate the conviction of offenders. All these ministerial responsibilities fall to the Minister for Police and Traffic, and I suggest that is inappropriate. I am not speaking of the present Minister in particular, but of any Minister for Police and Traffic. All these important matters affect the administration of justice and one wonders why the total control of the Act should not rest with the Attorney General. It very closely touches upon the areas of civil liberties and the rights of individuals. The office of the Attorney General would be the more appropriate office for the administration of these important matters.

I turn to some particular aspects of the Bill. Initially I refer to the opening paragraph of the second reading speech. The Minister states—

> This Bill places in one piece of legislation a comprehensive and coherent "code" relating to drugs of addiction, specified drugs, and prohibited plants.

The Bill will repeal certain provisions of the Poisons Act and the Police Act which will be brought together in this Bill under substantially similar provisions. It must be seen that the Minister quite advisedly in this House—after the issue had been debated at considerable length elsewhere—referred to the Bill as a code.

Too little significance has been attached to the question of whether the Bill is a code. The Minister said it is a code, he thinks it is a code and I would suggest, on any reasonable construction, it is a code.

It has to be understood that a code is an Act which incorporates all the relevant law on a particular subject into one Act. We have as an example the Criminal Code which, when enacted, replaced the whole of the common law with respect to criminal offences. So, following the passing of the Criminal Code any common law crime, misdemeanour or felony which existed up to that time ceased to exist—even those offences for which no corresponding provision was put into the code. It was put forward by the Parliament as the law relating to the criminal law and that is what the Minister says he is doing with the law relating to drugs. He is putting all the law into one Act.

Having done that, he will, with the design of this proposed Act, supersede all existing law on the subject. So, if one wishes to know the law on the subject matter that is of the misuse of drugs, one need look to one Act.

The importance of this is clearly summarised in a standard text on statutory interpretation. It is

the work of Dr Pearce called *Statutory Interpretation*. On page 102 under the heading of "Codifying Acts" he states as follows—

> There is only one real issue at stake when considering the question of interpretation of codifying statutes and that is whether or not it is possible to have regard to either the case law or the prior statutes that have been superseded by the code. The theoretical idea of a code is that it replaces all existing law and becomes the sole source of the law on the particular topic. This theory assumes that the code is in no way ambiguous.

If we consider the fundamental theory of a code, that all it is is that the law on a subject and that the prior law is superseded, then a question is raised which has never really been satisfactorily settled by the High Court or the superior courts in the United Kingdom as to whether or not one can have regard to other legislation, particularly in respect of defences available to charges under the code in question.

I shall quote further from Dr Pearce's text where he refers to a passage from a joint judgment by former High Court Justices Dixon and Evatt. It reads as follows—

> . . . (the Criminal Code of Western Australia) forms part of a code intended to replace the common law, and its language should be construed according to its natural meaning and without any presumption that it was intended to do no more than restate the existing law. It is not the proper course to begin by finding how the law stood before the Code, and then to see if the Code will bear an interpretation which will leave the law unaltered.

My concern is that if this law is a code in the sense I have indicated in the passages I have quoted, there is a very real possibility that a very important part of the Criminal Code—chapter V which deals with criminal responsibility—will not apply. I refer in particular to two particular sections of the Criminal Code; section 23 which deals with intention and section 24 which deals with mistaken fact. I shall quote the latter section.

*Sitting suspended from 3.46 to 4.02 p.m.*

The Hon. H. W. OLNEY: Section 24 of the Criminal Code provides—

> A person who does or omits to do an act under an honest and reasonable, but mistaken, belief in the existence of any state of things is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

It is provided further in that section that the operation of this rule may be excluded by the express or implied provisions of the law relating to the subject. Section 36 of the Criminal Code says that the provisions of chapter V apply to all persons charged with any offence against the Statute law of Western Australia.

So on the face of it, that rule in section 24 of the Criminal Code would apply to the Statute law of Western Australia unless it is excluded by the express or implied provisions of that Statute law.

I would like to demonstrate the significance of that provision in the present context. Clause 6 of the Bill provides—

> (1) Subject to subsection (3), a person who—
>
> (a) with intent to sell or supply it to another, has in his possession;

And I then go to the end of the subclause which reads—

> a prohibited drug commits an indictable offence . . .

That seems clear enough. If someone has in his possession a prohibited drug with the intent to sell or supply it to another, he commits an indictable offence.

Let us assume that a person has in his possession a prohibited drug or plant that he thinks is something else, or a prohibited drug which he thinks is a different type of prohibited drug. There is an important distinction there because one may think one has cannabis when in actual fact it is something else. However a person has come by possession of a drug—whether by purchasing it or being given it—his state of mind about that drug is important; that is, if he thinks it is something it is not.

On a strict interpretation of clause 6 of the Bill, if a person has in his possession a prohibited drug which it is his intention to sell or supply to another, he is guilty of an offence. However, under section 24 of the Criminal Code, if he has an honest and reasonable, but mistaken, belief in the existence of a set of things, he is not criminally responsible for the act or omission to any greater extent than if the real state of things had been such as he believed to exist.

So in ordinary criminal law, the state of mind of an accused person is of significance. Section 24 and other sections of the Criminal Code apply to such a case, unless the operation of that rule is excluded by the express or implied provision of the law relating to the subject.

This brings us to the question of whether the Misuse of Drugs Bill is a code. If it is a code, as the Minister suggests it is, and as it appears to be, then there is good authority to say that the operation of section 24 and other sections of the Criminal Code have no application. Then a defence such as belief, and ignorance, as to facts and or certain presumptions, does not apply. If that is the case, then some provision ought to be made in the law to ensure that the ordinary rules relating to criminal responsibility are applicable to that code. I know it has been said elsewhere, and publicly, that in 1973 the Supreme Court brought down a decision affecting this particular aspect of the legislation, and I will come to that in a moment.

On the question of whether this Bill represents a code, apart from what I have said already, I simply draw the attention of the House to clause 33 which deals specifically with attempts, conspiracies, incitements, and accessories after the fact. This clause makes provisions relating to those aspects of criminal conduct different from the provisions in the Criminal Code. So it would seem to be implicit in this Bill that there is a need to legislate specifically with respect to attempts, conspiracies, incitements, etc.

If the provisions of the Criminal Code apply, clause 33 would not be necessary. The same applies in regard to clause 32 which deals with the fact that a prosecution for an offence may be brought at any time.

The ordinary Statute law in respect of summary or simple offences is that prosecution must be brought within six months. This Bill has legislated specifically to overrule that law, and it makes a new provision different from the one contained in the Criminal Code. Perhaps that is not as strong an indicator as is clause 33, but I suggest that the structure of the measure raises a very strong presumption that this Misuse of Drugs Bill is a code, and therefore, it is not open to the courts to have regard to the previous law when coming to construe this Bill.

The Hon. R. J. L. Williams: But it is not a code, is it? It does not say that.

The Hon. H. W. OLNEY: If I may answer that question, Mr President, it does not say it is a code.

The Hon. R. J. L. Williams: That is right.

The Hon. H. W. OLNEY: It does not need to say it is a code to be regarded by the courts as a code.

The Hon. R. J. L. Williams: Is that right?

[118]

The Hon. H. W. OLNEY: That is right, Mr Williams. The Minister in another place believes that it is a code—he has said so on many occasions. The Minister who introduced the Bill in this House has said it is a code. The Minister in another place said that by looking at the Statute itself one can reasonably draw the conclusion that it is the law with respect to the misuse of drugs.

The Hon. R. J. L. Williams: Are you telling me the law refuses to recognise English, and that the word "code" means code? That is what you are saying.

The Hon. H. W. OLNEY: What I am suggesting is that if the honourable member looks at the Bill, he will find it contains a number of indicators to suggest that it is intended to be the law relating to the misuse of drugs. If that is the case, there is every possibility that the court would come to the conclusion that the ordinary rules of criminal responsibility set out in the Criminal Code of Western Australia would not have application to it.

The Hon. R. J. L. Williams: So you are equating that type of "code" with the code of justinian perhaps.

The Hon. H. W. OLNEY: One provision in the Bill that has raised some controversy relates to a person being on premises where a prohibited drug is being used. Leaving out the irrelevant parts, clause 5(1)(e) reads as follows—

> A person who—
>
> (e) is found in any place which is then being used for the purpose of smoking a prohibited drug or prohibited plant,
>
> except when he is authorized by or under this Act or by or under the Poisons Act 1964 to do so, commits a simple offence.

It is in respect of that particular provision that most of the debate has taken place. It has been said on the one side that the literal words of the Statute mean it would be possible to commit an offence inadvertently by being found in a place which is being used for the purpose of smoking a prohibited drug or a prohibited plant. Examples have been given, such as a person being in the foyer of a picture theatre when someone lights up a joint. On the face of it, there is no suggestion in the Statute that one's state of mind is relevant, and in response to that sort of objection, it has been said that a decision of the former Chief Justice, Sir Lawrence Jackson, in the Supreme Court in 1973, in the case of Peacock *v.* Drummond, has application.

I am sure members who are interested in this subject will have read the debates that took place elsewhere, and they will probably know of this case. However, the position is that the drug squad raided a farmhouse near Margaret River, of all places—

The Hon. R. J. L. Williams: Cannabis country!

The Hon. H. W. OLNEY: —or was it Augusta? There was a group of people, and the police said a smell of cannabis smoke was detected. The police waited outside for five minutes, went in, and saw somebody pass a pipe from one person to another. The question was whether, under the then section 94B of the Police Act, the person charged was found in a place which was then being used for the purpose of cannabis or opium smoking. The magistrate convicted, because there was evidence that cannabis had been smoked in the place. The person charged was there; and it was said that he was guilty.

On appeal, Sir Lawrence Jackson, sitting in the Supreme Court, reversed the decision. That case has been quoted and has been relied upon by the Government as indicating that, presumably, all of the defences open under the Criminal Code remain open because, as I understand the debate, the Supreme Court decision requires something more than just being present on the premises.

If one looks at the decison, one sees that it does not have any bearing upon defences under the Criminal Code. Indeed, it turns purely upon the word "use". The question was whether the dining room in the farmhouse was being used at the time for the purpose of smoking cannabis. The judge said that on the evidence available he did not consider there was evidence upon which the magistrate could find beyond reasonable doubt that the premises were being used for that purpose.

At page 154 of the law report, Sir Lawrence Jackson explained his decision in these terms—

> There is no evidence that more than one man smoked the pipe, and then only for a short time before the police arrived, his attempting to pass the pipe to another man was equivocal, as the police had then entered the room; the small quantity of cannabis on the table could readily have been recently placed there by the same man; if the farm house is in an isolated place, that would be equally true of many thousands of such houses in the State. There was nothing to show that any other person had taken part in smoking cannabis, or that any of them had gathered there for that purpose. The evidence is consistent with an entirely innocent gathering of a number of guests for a meal with the residents of the farm house, during which one guest of his own accord fills and lights a pipe of cannabis.

He goes on to say that this does not amount to evidence of using the premises for the purpose of smoking cannabis.

Let us take another example. One cannot argue with the former Chief Justice. One cannot say that that dining room, by any stretch of the imagination on those facts, was being used. Of course, one has to look at the facts that were found to be proved, not the facts that one thinks might have been the case. It could not be said that the farmhouse was being used for the smoking of cannabis, on that evidence.

The Hon. G. C. MacKinnon: That is, in front of the law. In front of common sense, of course, you would.

The Hon. H. W. OLNEY: Fortunately the people who come into conflict with the law are not convicted by common sense.

The Hon. R. Hetherington: That is probably just as well.

The Hon. G. C. MacKinnon: Knowing the area and looking at the situation, you know jolly well what is going on.

The Hon. H. W. OLNEY: Let us take another case that Mr Baxter would call utter rubbish. It might be fanciful; but let us take as a possibility that in this community there are places such as massage parlours. We now know they exist; and they are tolerated, or "contained". Let us assume that a room in one of those premises—I will give the address, if members are interested; it is near my place—is set aside for people to partake in the smoking of prohibited drugs or plants, whatever they may be. In the premises near which I live, there is a waiting room, and there appear to be some cubicles down a passageway. If somebody is transacting lawful or, if not lawful, tolerated business in one cubicle—

The Hon. R. G. Pike: The Hon. Mick Gayfer would say you have an unusual interest in the subject.

The Hon. H. W. OLNEY: It is in my electorate, and I have to have an interest. If someone is conducting tolerated business in one cubicle, and in another cubicle somebody else is smoking a prohibited drug, can one say that those premises are being used for the purpose of smoking a prohibited drug? Of course one can. A person using the premises innocently for purposes other than smoking a drug would certainly be

upon the premises. There cannot be any question about that. The decision in Peacock *v* Drummond would have no application whatsoever.

A very good case can be made for writing into this Bill the protection and the preservation of the ordinary rules of criminal responsibility which apply in the Criminal Code. If it is needed, I refer briefly to the United Kingdom legislation which, in most respects, is similar to this Bill.

In section 28 of the Misuse of Drugs Act of the United Kingdom, an extensive provision sets out terms very similar to the criminal responsibility sections of our State Criminal Code. Apparently it was thought necessary in the United Kingdom to write in that sort of protection to ensure that people did not commit offences innocently.

I urge the Government to reconsider the decision that it obviously has made already to refuse to include in this law some provision which indicates quite clearly that the rules of criminal responsibility in chapter V of the Criminal Code are applicable.

It may well be that the arguments I have put to the House today on this question are wrong. There is at least a 50 per cent chance that they are wrong. In any litigation—

The Hon. R. Hetherington: I wouldn't think so—not in this case.

The Hon. H. W. OLNEY: —one always has a winner and a loser. In over 24 years of practice, I have found that one wins as many as one loses.

The Hon. R. G. Pike: Others are wrong only if they disagree with you.

The Hon. H. W. OLNEY: Indeed, sometimes I have known appeal courts to be wrong. Let us assume that there is a possibility that my argument is not correct. In that case, I ask the Government whether it is worth the cost of putting accused persons to the trouble, the anxiety, and the strain of having to go as far as the High Court, possibly, to find out whether chapter V of the Criminal Code is applicable to offences under the proposed Misuse of Drugs Act, when it would be possible, in two or three lines, to say what the Government says is the position. What will be lost if the Government says, "Well, what we have said in our debate elsewhere and in our Press releases is true, and just to show our bona fides here, in two or three lines we are putting the question beyond doubt"? There would be no loss of face and no loss of political mileage in doing that. I suggest that a considerable advantage could be gained, because the people who finish up on the receiving end of this legislation will usually be ordinary people.

When I say that, I am not talking about the traffickers, the conspirators, the organisers of drug rings, and all those other people about whom the Minister has spoken. I am talking about the end man—the consumer. We are not talking about the addict; we are talking about somebody who finds a pipe that has on it a trace of cannabis and has it in his possession. Is he guilty of an offence? Under the proposed Act, he would be guilty unless the question of his state of mind is relevant.

If the person does not know the pipe has cannabis in it, he ought not be guilty. Those are the sorts of people who will be brought in under this legislation—the innocent ones, the ones who can show that they had a mistaken and a reasonably mistaken view of the state of the facts. I am not going in to bat for the criminals and the organisers of the drug traffic.

Having had some experience as a magistrate, I can assure the House that at the level at which the law enforcement takes place in respect of this type of offence—that is, before justices in the Lower North Province, or the North Province, or wherever it might be, perhaps sitting under a gum tree, in an old police station, or at the shire council hall, without any facilities in the way of a legal library—when the offence comes before the court, even a stipendiary magistrate who perhaps has not come across this provision can come to the conclusion, upon ordinary rules and construction, that section 24 of the Criminal Code does not apply, and therefore the person is found guilty; and this then throws the burden on the convicted person to run the whole gamut of appeal in order to rectify the position.

How much easier it would be for the law to say in precise, simple terms what the Minister says it means. I urge that, when we come to the appropriate stage, some serious consideration be given to that matter.

Another aspect of the Bill to which the Opposition objects, is the mandatory provision of imprisonment in respect of conspiracy to commit certain offences. Here again, there is another indicator that this is not a law to which the Criminal Code applies, because the Criminal Code has provisions about conspiracy, but this law makes a different provision about conspiracy.

In respect of the most serious offences it is provided the offence of conspiring to commit attracts a maximum penalty not exceeding 20 years in prison without the option of a fine, and yet if, instead of conspiring to commit that offence, the offender in fact committed it, the maximum penalty would be a term of

imprisonment not exceeding 25 years or a fine not exceeding $100 000 or both.

The significance is that, for the more serious offence—it must be more serious, because the maximum penalty is higher—the court is given an option to impose either imprisonment, a fine, or both, and yet apparently the less serious offence of conspiring, whilst it has a reduced prison term as a maximum, has no optional fine.

It is difficult to take seriously the Minister's statement that it is indeed the conspirator and not the acutal offender the Government is looking to attack, bearing in mind what I have just said. Indeed, the Government should take that point of view, because, of course, in highly organised activities with which apparently we are confronted here, the Mr Big of the drug business will protect himself. He will not be caught in possession, nor will he be caught actually handing over the drug or receiving the money. He will not be caught so that he can be prosecuted for the offences of selling, being in possession of drugs, or whatever it might be.

The only way he can be reached is by the conspiracy provision and so he ought to be. For the life of me I cannot see why, on the one hand, the Government wishes to reduce the maximum penalty for conspiracy as compared with the actual offence, but, on the other hand, provides no optional fine. There seems to be a patent inconsistency here which is contrary to all the accepted views with regard to criminal punishment; that is, that mandatory sentences and penalties are against the interests of justice. Once we take away a discretion from the court in a matter which is normally entirely at the court's discretion, we will have "hard cases" and injustices. I invite the Government to reconsider that aspect of the Bill.

Another aspect of the Bill to which I draw attention is to be found in clause 34. Perhaps I might be speaking to only a relatively few members who have taken the trouble to analyse the legislation and understand the significance of the schedules, in particular the third, fourth, fifth, and sixth schedules.

Those schedules are of two types. They contain lists, and one list is made up of a group of prohibited drugs and another of prohibited plants. One schedule contains a provision relating to the quantity of a particular drug or plant which, if found in one's possession determines that the offence is an indictable one as distinct from a simple one; the difference being that the indictable offence is for trial by jury and that carries a substantially heavier penalty than a simple offence which is for trial by a magistrate.

Similarly, two schedules set out quantities of drugs or prohibited plants the possession of which give rise to a presumption that the person in possession of them has the intention to sell or supply; therefore, a person who has an amount of drugs or prohibited plants which is less than the prescribed figure, is not automatically deemed to have the plants or drugs in his possession with the intention to sell or supply. However, if he has in excess of that amount, there is a presumption—which, of course, he may deny if he can—that he had the drug with the intention to sell or supply.

The effect of clause 42 to which I referred earlier is that the Governor will be given power by Order in Council to add to or make deletions from the schedules of the legislation, and to delete or vary any of the prescribed amounts of drugs or prohibited plants. Our objection to this provision is that the Parliament having gone into much detail with 142 items in one schedule and 144 in another to specify amounts, it is inappropriate that the changing of these amounts should be a matter of Executive action.

We have a number of objections. Of course, one is that the provision enables the Executive to change a law passed by the Parliament. Perhaps a more important objection is that the general public may not appreciate what is done. It is true the Order in Council must be published in the *Gazette*, but if I as a member of Parliament cannot get the Government to supply me with a copy of the *Gazette* without charge—which I cannot do, because I have asked the Attorney General for one and he has said it would cost too much—I venture to suggest that the general public would not be in the market for a free copy of it. Unless the Press or another news medium takes up the matter of the publication of these amendments in the *Gazette*, no way exists for the general public to know about these variations. If a well-educated, or more aware, member of the general public went to a public library and referred to the Statute book, found the Misuse of Drugs Act, looked at the schedule and checked the index to determine whether the Act had been amended, he might be excused for thinking the provisions in the schedule applied without question; yet they may not because they could have been amended by an Order in Council.

An Order in Council is not the same as a regulation; it does not have to be tabled and is not subject to disallowance. I refer the Minister to a precedent established within the Factories and Shops Act under section 6 which gives the

Minister responsible for the administration of that legislation, with the approval of the Governor, power by Order in Council published in the *Gazette* to declare certain things with respect to the application of the Act. In other words, the Minister can modify the application of the Act by Order in Council.

Section 7 of that Act also empowers the Minister in a similar way to exempt certain people from the application of the Act. Sections 6 and 7 require the Order in Council to be tabled, and make it subject to disallowance in the same way as a regulation. All I am asking the Government to do is consider such a provision for proposed new section 42 of the Bill. This proposed new section is very important because it has the effect of reversing onus of proof in some cases—in the main, they are important cases—and that effect ought not be subject to amendment by a mere Executive act.

The final matter upon which I wish to touch—

The Hon. D. J. Wordsworth: Briefly.

The Hon. H. W. OLNEY: —is referred to in the second reading speech. Possibly this matter will be the final aspect of the Bill about which I will speak.

The Hon. G. E. Masters: I am sure it will not be.

The Hon. H. W. OLNEY: I draw attention to the fact that the Bill does not differentiate between different classes of drugs except to the extent that the existing provisions with respect to certain offences relating only to cannabis are made punishable to a lesser extent than the same offences if they do not relate solely to cannabis. I refer to clause 34 (2) of the Bill.

I turn back to the situation in England; we have something to learn from it. The English authorities have conducted a number of inquiries into the illegal drug scene. In particular I refer to the Rolleston committee of 1926 and the Brain committee of 1961. England has a considerably greater population than Australia—

The Hon. G. C. MacKinnon: The legislation of 1971 that you spoke about, did it reverse the trend in the United Kingdom at all?

The Hon. H. W. OLNEY: According to the report I have the various strategies adopted by the English Government tended to reverse the trend with respect to the illegal use of drugs. The strategies appear to have arrested the trend towards an increase in young users. I suggest that has occurred because the English Government has tended to consider the whole problem, not just penal provisions relating to drug abuse. The English authorities therefore have been in a better position to monitor what goes on.

The predecessor of the advisory committee established under the 1971 Act made an estimate in 1968 that there were between 30 000 and 300 000 cannabis users—not addicts. One can see that obviously the resources of that committee were not all that high because there was a multiplier of 10 between the least number and the highest number of estimated users. From investigations the committee found that cannabis smoking was a social rather than a solitary exercise which did not have class barriers but in particular involved young people. I am not talking about drug pushers or traffickers; I am talking about people involved in a social activity.

It was not found that people were locking themselves in a room and smoking cannabis. People were not found to be using a hypodermic to get "blown out". It was found to be not unlike having a cigarette or a drink of beer or whatever else people drink when socialising. The conclusion was that although support should not be given to the wider use of cannabis, its dangers had been previously overstated. Therefore the existing sanctions which grouped its use with other drugs were regarded as unjustifiably severe.

Therefore in the 1971 legislation drugs were classified into three groups, A, B, and C. The general basis of classification was related to the likely harmful effect of drugs in each classification. As it happened, cannabis was placed in group B; drugs such as heroin were in group A; and other drugs were in group C. The penal provisions relating to the use of the various classes of drugs varied with the heavier penalties applying in respect of drugs which were thought to be more dangerous than others.

This Government has failed to make any proper assessment of the effect of the different types of drugs. This is something it ought to do if it is at all interested in other than providing penalties which can be enforced for the imprisonment or fining of offenders against the legislation. This matter ought to be considered as a matter of urgency and it is something which I feel is not capable of being achieved by amendment in the Committee stage, because it really relates to the total structure of the legislation.

It is something the Government could well give attention to, instead of just lifting out the existing Police Act provisions, changing the wording a bit, and popping them into a new Act with a misleading name.

The Opposition is opposing this Bill on its second reading. We propose during the

Committee stage to draw the attention of the Chamber to what we see as a number of particularly objectionable aspects of the various provisions in the Bill.

**THE HON. P. G. PENDAL** (South-East Metropolitan) [4.46 p.m.]: I rise to support the Bill, to make some comments on it, and to commend the Government for taking the initiative in codifying the law in the way it has done in an effort to make a more effective attack on the drug problem. Perhaps one of the less edifying aspects of the public debate in this matter in the last couple of weeks were the rather unfortunate comments made by the Minister for Police and Traffic in describing the broad coalition of opposition to the Bill in the words that were used in recent days—if in fact those words were intended to refer to all of the people within the coalition.

My understanding is that broad coalition of opposition to the Bill works under the name of the public committee on the Misuse of Drugs Bill 1981. I am not suggesting the Minister's remarks of the last couple of days were directed at all parts of that coalition. If they were, then at the very least, they were unfortunate. I say that because I had the opportunity in the last day or so of meeting with one of the components of that coalition which is publicly opposing the Bill.

The people concerned came to see me. I made my attitude clear—that I would support the Bill. At my prompting, however, this three-member deputation, all of whom were social workers, made it clear that they were certainly not contra-anybody. Each of the three persons was totally opposed to the use of all kinds of narcotic drugs. Equally, they made it clear to me that they certainly were not anti-police. Indeed, at my prompting, they each admitted that they were pro-police.

The interesting thing that came out of the discussion after an hour or so was that these people, in essence, were not opposed to the Bill at all. They were big enough—I suppose that is the term—to admit to me that they carry a kit of information which they distribute in order to win support for their point of view. After having put their general complaints to me, they agreed that indeed their opposition was not so much to the Bill now before this Parliament, but was more in the form of some constructive criticism that they had to offer of the Police Force.

I underline the point that their criticisms were not of the usual hysterical kind sometimes made against the Police Force. I made it clear to them that I personally have a most high regard for the Police Force and the drug squad, some members of which are known to me on a personal basis. Their criticisms are more in the nature that they believe the Police Force—and perhaps the drug squad in particular; I do not know—do not seem to feel that they as social workers have a role to play in the eradication of the drug problem. In their discussions with me they took the view that there were many occasions when they were in a position to help the police. Indeed, according to one of the social workers, on a number of occasions information had been passed to the police and acted upon by the police for the benefit of the community. Their criticism was really that there was a lack of communication between people of their kind who are principally involved in the eradication of the drug problem by way of rehabilitation, whilst recognising that the police are primarily involved in that eradication in terms of detection. In other words, they recognise that they have a role to play, as equally does the Police Force.

One of their specific complaints or criticisms was that they as social workers did not have an opportunity to provide any input into the training of police officers dealing with the drug problem. I will return to that point briefly in a moment. They gave examples of many young people—they were principally concerned with young people—who are in or around the drug scene and who would approach the Police Force or the drug squad with more information to help in terms of eradicating the drug problem if they had more confidence in the way certain things were done.

They even went so far as to suggest to me that the sort of information that was available would be information that could topple even some of the tall poppies—the very people against whom this legislation is directed. I will give an example: Apparently around the city there are a number of private drug referral centres to which young people who have any sort of connection with drug taking, drug using or drug abuse are referred. Instances were given to me of young people who use these places perhaps as a haven, with some confidence in the people who operate them. The police, in the perfectly normal and legitimate pursuit of their duties, would arrive at a drug referral centre to interview two or three people and would take them to, presumably, central, interview them, obtain information—again perfectly legitimate—and then return them to the drug referral centres.

I am told that occurs. I am not suggesting, and nor were they, that there is anything sinister or improper about that. However, they said that sort of activity by the police officers begins to

undermine the confidence those young people have in drug referral centres. It undermines their rehabilitation processes—processes which I am sure the police support.

Perhaps there should be another way in which the officers of the law can obtain access to these young people. Perhaps they can act in a way which will not lead people to believe the social workers are feeding information to the police.

The social workers claim that they are not receiving the opportunity to provide an input into the training of police officers who are involved in drug detection. That claim is backed up by the example I have just given. There must be ways in which the social workers can advise the police of the best way to extract the most information for the benefit of their inquiries.

They referred to a scheme which has been operating very successfully in the United Kingdom for approximately three years. It is a system whereby police cadets of a particular division are handed over, as it were, to reputable social workers and spend a two or three-week period with them as part of their training.

The police officers are, in this way, engaged in training in the field, although they do not exercise any police powers. Perhaps that would be irrelevant in this State—I am not aware of the situation with the police cadets in Western Australia and whether they exercise any legal powers while they are cadets.

Such a training programme would help to obviate the fears presented to me that the police officers are a little insensitive in their dealings with drug referral centres.

The social workers said they did not get very far in their negotiations with the Police Department. In fairness to the department, I am not sure whether they made formal approaches for negotiation. They did make the point that the department perhaps would not look kindly at a suggestion of that kind because it had been said it might look as though the police were adopting a "soft" approach and that would be detrimental to police work.

Presumably the police officers involved in such an unsavoury area as drug detection have to approach their job with some aggression because of the amount of money people make out of the tragedy they visit upon many young people in the community. The social workers believed that the members of the Police Force felt it would give an impression that they were somewhat soft by being associated with social workers in that way. The social workers felt that was the last thing they expected from the officers because they as people were involved in the rehabilitation of drug users and were just as vehement in their opposition to the use of drugs as were the officers of the drug squad.

They stress that the police have one role and the social workers have another, but the end result is the same: The eradication or minimised use of drug products. The drug squad has the role of detection and the social workers have the role of rehabilitation. Those ideas were not meant in criticism of the police but to assist them in what they have been doing up to now quite successfully.

**THE HON. I. G. PRATT** (Lower West) [5.01 p.m.]: Generally, I support the Bill because it reflects the concern of the community. However, some minor parts cause me concern and after listening to Mr Olney that concern has increased. When the legislation refers to an area which is being used for the smoking of a prohibited plant, the wording is far too loose. I believe we should insert some definition of what is being used and what is meant. We should use a similar type of definition to that which is used in another clause of the Bill which refers to the word "knowingly".

If we are referring to an owner of a property, he has to have knowledge that the drug is being used. I do not believe it is right that there can be some rule that having knowledge of anything should apply to premises being used for the purpose of smoking a prohibited drug. I shall have much more to say about this during the Committee stages. However, I ask the Minister to consider doing something about this clause because it has worried me ever since this debate commenced. I have come to the conclusion that this clause is not acceptable and I hope the Minister will move an amendment during the Committee stage.

If that is not the case and if Mr Olney decides to move an amendment, I shall have to look to some support of him or the possibility of moving an amendment myself.

Debate adjourned, on motion by the Hon. R. J. L. Williams.

## COUNTRY AREAS WATER SUPPLY AMENDMENT BILL

*Receipt and First Reading*

Bill received from the Assembly; and, on motion by the Hon. G. E. Masters (Minister for Fisheries and Wildlife), read a first time.

*Second Reading*

**THE HON. G. E. MASTERS** (West—Minister for Fisheries and Wildlife) [5.04 p.m.]: I move—

That the Bill be now read a second time.

This Bill incorporates a number of relatively minor amendments, the desirability of which have become evident from past experience in administering the Act.

Firstly, under the present definition of "farmland", applications for farmland rating classification are being received from owners of properties which are not being used for the type of broadlands farming purposes for which the farmland scheme was established.

Examples include the small hobby farm type of holding, vacant blocks used for grazing, etc., located in or adjacent to townsites, and properties where the water supply is not from a farmland reticulation main.

The proposed amendments are directed towards a more specific definition. At the same time, the Bill proposes that those properties currently classified as "farmland" will continue to be rated on this basis.

The Bill introduces a new Section 12EE to provide for the recognition of certified aerial photographs as evidence in prosecutions for breaches of the land clearing controls. This type of evidence is important in an attempt to establish that an offence has been committed.

It further proposes that in the absence of evidence to the contrary, the aerial photograph is to be accepted as providing prima facie evidence that the owner or occupier carried out the clearing activities indicated by the certified photographs.

The Bill proposes also amendments to section 32 of the principal Act to clearly define the procedures for the testing of meters and the allocation of these costs. The existing provisions appear to require the Minister to initiate the testing of a meter whenever disputes occur. The Bill now provides for the dissatisfied party to initiate such action and if the meter is found to be registering within the prescribed limits, the costs associated with the testing are to be met by the applicant.

It is proposed further to prescribe a standard fee wherever possible. However, there will be situations where this should not apply—for example, where the costs associated with the meter test involve additional expenditure such as travelling—and, in these cases, the actual costs will apply.

The Bill also will remove any deficiencies which may have existed as to the authority of the Minister to use actual or assessed consumption in cases where the meter is found to be out of order. It has been the established practice when a water supply service has been disconnected for the non-payment of water rates or other charges to charge a fee for reconnection. The authority for this action is specified in the by-laws.

Although costs are incurred in both disconnecting and connecting, no charge has been raised for the disconnection action. The Bill ensures that there is statutory authority for prescribing a disconnection and reconnection fee or to charge the actual costs involved where this is considered to be appropriate. It is only right that persons in default should be required to meet these costs and not expect other consumers generally to absorb this expense. Further, the person in default should not be entitled to a rebate of rates for the period the service is disconnected.

The final two amendments cover the ratable area and the maximum rate for farmland rating purposes.

In respect of farmlands, holdings shall be ratable only so far as they extend to a distance not exceeding 2.414016 kilometres from a water main. This distance is a direct conversion of an imperial measure, being 1½ miles, formerly specified in the Act. In the interests of easier measurement and administrative simplicity, the Bill proposes to amend this distance to 2.5 kilometres.

Because the amount of additional revenue is negligible, it is not intended to adjust all existing rated land to the new distance, and the Bill provides the Minister with discretionary powers in this regard.

Section 65 of the principal Act provides for a maximum rate of 4.942c per hectare. Again, this is a direct conversion to decimal currency and metric measurement of the former two and two-fifths pence per acre. Apart from specifying this amount in an easier applicable rounded metric number, it must be adjusted also to a more realistic figure. The present maximum rate has been levied and not varied since 1964 and has become quite obsolete by now.

The proposed new maximum is 30c per hectare. The Minister for Water Resources has given an assurance, however, that there is no intention to apply this new maximum but, rather, to allow for some increase beyond the old maximum as may be necessary from time to time.

The Bill contains special provisions which will preclude the application of the proposed changes in both distance and maximum farmland rates for

the financial year that is current when the amendments come into operation.

I commend the Bill to the House.

Debate adjourned, on motion by the Hon. F. E. McKenzie.

## ANIMAL RESOURCES AUTHORITY BILL

*Second Reading*

Debate resumed from 9 September.

**THE HON. H. W. OLNEY** (South Metropolitan) [5.10 p.m.]: The Opposition does not oppose this Bill, which makes provision for the establishment of an animal resources authority, the function of which is to breed animals for the purpose of use in scientific experiments. The authority will bring together the three different "users" of animals, the Univeristy of Western Australia, Murdoch University, and the Western Australian Institute of Technology.

The question of using animals for scientific research excites a considerable amount of emotion in some quarters. I am sure if we were in England debating this Bill there would be more protestors and picketers outside Parliament House than we saw over workers' compensation and all those other sensitive issues.

The community seems to be divided into two separate views on this subject. One is that it is appropriate to use animals for medical research for the benefit of mankind and the other is that animals should not be used in this way. The Opposition has taken the view that, subject to appropriate safeguards and ethical standards being observed, and subject to there being no unnecessary cruelty inflicted on the animals, on balance the welfare of mankind must take preference over the welfare of the lesser animals. For that reason, we go along with the legislation.

However, there are a few things that I wish to say. I am glad the Attorney General is in the House because it may be that what I have to say is more relevant to matters under his control. We are faced once again with the presentation of a Bill to establish a statutory authority and we find in the Bill the all too familiar machinery provisions setting out the power of the authority, how it is to execute documents, the term of office of its members, what to do about temporary members, who is to be chairman, what the quorum shall be, when meetings shall be held, whether a resolution can be proposed by telegram, and all manner of detailed information.

I suggest that in this Bill of some 15 pages, only 2½ pages would deal with really substantive legislation, with the rest relating to the machinery of the authority.

I put it to the Government that perhaps it is time we had a Statute regulating statutory authorities in much the same way as we have a Statute regulating companies. The Attorney General no doubt would be very familiar with the third schedule to the Companies Act which sets out the implied powers under that Act. Doubtless, the provisions of table A of the fourth schedule of the Act, which sets out the standard form of articles of association would be familiar to many members. So, it is possible if a person is forming a company in a commercial sense, if he wants to minimise the amount of paper work, to get away with two or three pages of typing, setting out the specific objects of the company and the details which are peculiar to that company.

I am wondering whether we could reach the stage in this State at which a statutory corporation's Act sets out all these detailed machinery matters that keep coming up now and again, so that all that is necessary to establish an authority is to say, "There shall be an animal resources authority. Its functions will be . . .", and set out the principal functions. "There will be X people on the board", and then set out exactly how they will be appointed. That is about all that would be needed. The other detailed machinery provisions could be avoided. That would facilitate the operation of such authorities.

Such an Act would overcome the initial omission from Statutes of powers with respect to investment, or the buying or selling of land, or such other things which necessitate amending Bills being rushed through to legitimate transactions that have been made in the past. We could simplify the law very greatly by the adoption of such a step.

However, as I have said, that is not relevant to the Bill. It is something to which the Government might give consideration. Otherwise, we support the measure.

**THE HON. D. J. WORDSWORTH** (South—Minister for Lands) [5.16 p.m.]: I thank the Opposition for its support of the legislation. I note that the member put arguments about whether we should be using animals for this sort of research. I do not wish to become involved in those arguments in this debate.

In relation to the machinery to set up animal breeding, I am not sure whether we could have a Statute to cover every need. I will refer that question to the Attorney General, as it is more in his line.

The Hon. R. Hetherington: You won't get an opinion though—not now.

The Hon. D. J. WORDSWORTH: Mr Olney is like many of the lawyers today. They have everything on a computer print-out. When one asks a lawyer for a lease, he provides the standard lease that one completes in four places, and it is finished.

The Hon. H. W. Olney: I assure you it is cheaper that way.

The Hon. D. J. WORDSWORTH: I have not noticed the price coming down.

I thank members for their support and commend the Bill to the House.

Question put and passed.

Bill read a second time.

*In Committee, etc.*

Bill passed through Committee without debate, reported without amendment, and the report adopted.

*Third Reading*

Bill read a third time, on motion by the Hon. D. J. Wordsworth (Minister for Lands), and passed.

## ADJOURNMENT OF THE HOUSE

**THE HON. I. G. MEDCALF** (Metropolitan—Leader of the House) [5.20 p.m.]: I move—

That the House do now adjourn.

*Parliament House Precincts Committee: Barracks Arch*

**THE HON. R. J. L. WILLIAMS** (Metropolitan) [5.21 p.m.]:

I will not detain the House for very long. It is essential that we stop a practice about which I will speak.

A piece of paper has come into my possession, and it is a facsimile of a sheet of notepaper from the City of Perth. It has been distributed freely around the town. It reads as follows—

> BARRACK'S
> ARCH—PARLIAMENTARY PRECINCT
>
> The Parliamentary Precinct Study Committee has recommended that the edifice known as the Barrack's Arch be removed from this site to provide Parliament House with an improved view along St George's Terrace.
>
> Each brick will be numbered and catalogued before dismantling on October 31, 1981. The Committee recommends that the Barrack's Arch be reconstructed on Heirisson Island by November 5, 1981.
>
> All written submissions should be addressed to the Town Clerk, Perth City Council by October 9, 1981.
>
> All enquiries to: 3221344 3210161.

I have made inquiries about the two telephone numbers. The first is that of Parliament House, and the second is that of Newspaper House. The sheet is signed with an illegible scrawl.

I have ascertained from the two Parliamentary members of the precincts committee that the statements in that letter are not true. I will hand that letter to you, Mr President, for transmission to the Lord Mayor of the City of Perth for such further action as he deems necessary, as the letter is written on a facsimile of the notepaper of the City of Perth.

Question put and passed.

*House adjourned at 5.22 p.m.*

## QUESTIONS ON NOTICE

### HEALTH: TOBACCO

*Juveniles: Supply*

512. The Hon. W. M. PIESSE, to the Minister representing the Minister for Police and Traffic:

With reference to the Minister's statement to me 12 months ago that the penalty of $4 for supplying tobacco products to juveniles is inadequate, would the Minister please advise me what steps the Government has taken to rectify this matter?

The Hon. G. E. MASTERS replied:

Due to an administrative misunderstanding, no action has been taken regarding this subject. However, the matter will now be investigated further.

### COMMUNITY WELFARE

*Children: Foster*

519. The Hon. TOM McNEIL, to the Minister representing the Minister for Community Welfare:

(1) Is it a fact that the Community Welfare Department has advised foster parents, Mr and Mrs W. Mooring, of Geraldton, that their foster children, Robert Hatch (12 years) and Lita Pearson (8 years) would not be returning to Geraldton after spending school holidays with Robert Hatch's alleged natural father at Esperance?

(2) If "Yes", would the Minister advise—

(a) whether the decision to leave the children at Esperance was as a result of representations from a member of Parliament;

(b) whether this decision was made as a result of a ministerial direction or intervention;

(c) when were Mr and Mrs Mooring advised of the decision, and by whom;

(d) whether the Moorings are considered suitable foster parents;

(e) on what grounds the department decided the alleged natural father was a suitable foster parent;

(f) what documentary proof the department possesses to substantiate the alleged father's claim;

(g) what consideration was given to the special schooling the children were undergoing in Geraldton;

(h) whether Lita Pearson's father, who lives in Geraldton, was consulted before deciding the child would not be returning to Geraldton;

(i) whether he consented; and

(j) why it was considered necessary for Lita Pearson to stay in Esperance?

(3) Would the Minister give consideration to reappraising the situation in order that the children can return to their foster parents, and continue at the school where they were showing so much progress under a remedial teaching scheme?

The Hon. G. E. MASTERS replied:

(1) to (3) It is not fair to the parties concerned, in particular the children, to enter into public debate about departmental actions in this case.

The member made direct representations to the Minister's department. Other representations were made to the Minister. The Minister gave no directions to his department because there are many conflicting interests involved, and he was satisfied that the department was acting in the best interests of the children concerned.

The department will advise him further in the matter after a case conference on 18 September. That conference will consider the overall position and the many conflicting interests involved. Its primary responsibility will be to—

(a) support family relationships; and

(b) consider the best interests of the children for whom the Minister has responsibility.

The conference has been planned for some weeks.

## INSURANCE: BROKERS

*Licensing Board*

527. The Hon. J. M. BROWN, to the Minister representing the Chief Secretary:

(1) Who is the Chairman and the three members of the Insurance Brokers Licensing Board?

(2) How many applications have been received for registration as—

(a) insurance brokers; and
(b) insurance Agents?

(3) What is the annual fee for—

(a) insurance brokers;
(b) insurance agents;

and how often is the fee to be paid?

(4) What is the total amount of fees collected, since inception, for registration as—

(a) insurance brokers; and
(b) insurance agents?

(5) What is the position for insurance agents who represent one insurance company that has underwriting facilities with more than three other insurance companies whose facilities are utilised by the agent?

(6) How many insurance agents have applied in writing to be excepted from the meaning of that expression "Insurance Broker" under Section 4(4) of the Act?

(7) How many insurance agents have been—

(a) granted exemption;
(b) refused; and
(c) deferred;

from the title "Insurance Broker"?

The Hon. G. E. MASTERS replied:

(1) Chairman—Mr L. L. Ikin
Deputy Chairman—Mr E. L. Morton
Member—Mr R. J. Trigg
Member—Mr L. I. Baxter.

(2) (a) 59;
(b) 1 459.

(3) (a) $100;
(b) $20.

In the case of insurance brokers, the fee is payable once annually and in the case of insurance agents, the fee is payable on a triennial basis.

(4) (a) $5 900;
(b) $131 220 of which $43 680 will be refunded to the agent or authority who paid the fee. This situation has been brought about by a reduction in the annual fee for insurance agents from $30 to $20. At the present time, the board has received 1 459 applications accompanied by $90 payments and three applications accompanied by $60 payments.

(5) If the agent is dealing independently with more than three underwriters he must apply for exception under section 4(4).

(6) 67.

(7) (a) to (c) At this stage the board has not considered any of the applications for exception under section 4(4) of the Act.

528. *This question was postponed.*

## WATER RESOURCES: RATES

*Instalments*

529. The Hon. P. G. PENDAL, to the Minister representing the Minister for Water Resources:

I refer the Minister to my question 391 on 19 August 1981, and ask—

(1) What cost disadvantages to the board would be involved in the payment by water consumers of weekly instalments towards their water accounts?

(2) Why is it that only ratepayers facing genuine hardship should have the instalment facility available to them?

(3) Does the Minister not recognise that there are many consumers, not in the hardship classification, who would find considerable advantage in their household budgets by being given access to a general instalment facility for such payments?

The Hon. G. E. MASTERS replied:

(1) Additional staff and facilities required; additional stationery and postage costs incurred; additional costs for Australia Post receiving services; and loss of interest on deposits.

(2) To contain costs.

(3) It is doubtful that such consumers would consider that the theoretical benefits warrant the additional cost to ratepayers.

## QUESTION WITHOUT NOTICE

### WATER RESOURCES: EFFLUENT

*Point Peron*

167. The Hon. NEIL McNEILL, to the Minister representing the Minister for Health:

(1) Has the Minister's attention been drawn to the article in *The Sound Advertiser* of 16 September relating to the proposed effluent pipeline, in which article the member of the Legislative Assembly for Rockingham is quoted as saying—

> No studies have been directed to even one of the many viruses that can, and are carried by sewage. Encephalitis and typhoid come to mind.
>
> Is it irresponsible to express concern over studies that are reported to be completed but which have not invesitgated any viruses or their possible effects?

(2) Is this the true position, and is there any substance in these criticisms?

The Hon. D. J. WORDSWORTH replied:

(1) and (2) I can assure the House that there is no substance whatever in the criticisms attributed to the member for Rockingham; and in fact his comments quoted in yesterday's *The Sound Advertiser* are nothing but a tissue of distortion and deception.

It is difficult to take the criticisms seriously when they come from a source that parades ignorance of health matters in such an ostentatious fashion. Typhoid fever, for example, is not caused by viruses but by a particular salmonella organism. The feasibility studies on the proposed pipeline at Point Peron have looked at the behaviour of salmonella and similar bacteria and show a vanishingly small probability of any of them reaching the beaches even in the most adverse anticipated conditions. In fact the water will remain of good swimming quality for over one kilometre off-shore.

It is true that encephalitis can be caused by viruses. However attempts to whip up this issue founder for the simple reason that it is doubtful if any of the viruses commonly associated with encephalitis ever occur in sewage.

Members will be aware that the feasibility study is continuing and that the Government has made no final decision on the pipeline and does not expect to be in the position to make such a decision until March of next year. I believe it is irresponsbile to express concern over studies which are still continuing but which are misrepresented as being already complete.